

Montana Constitution, Article II*

Sec. 8: Right of Participation. *The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.*

Sec. 9: Right to Know. *No person shall be deprived of the right to examine documents or to observe deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.*

Sec. 10: Right of Privacy. *The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.*

General Statutes (not exhaustive)

Title 2, Ch. 6:

Public Records

Title 2, Ch. 17, Pt. 5:

Montana Information Technology Act

Title 30, Ch. 18, Pt. 1:

Uniform Electronic Transactions Act

Judicial System:

Rules of Civil Procedure, Evidence

Electronic filing & storage of documents
(permissive)

Records Generally

Statutory Definitions

Public Writings (2-6-101)

Public Records (2-6-202; 2-6-401)

Official Records (2-6-301)

Historic Records (22-3-102)

Essential Records (2-6-206)

Record (30-18-102)

Electronic Record (30-18-102)

Local Government: city; town; county; consolidated city-county; school district; a subdivision of one of the listed entities (2-6-401)

General Lifecycle of a Record

1. Document is created
2. Document is identified as a public record
3. Document is retained as provided for in retention schedule
4. At end of retention schedule, document is disposed of OR is archived (with the agency, state records center; state archives)

Title 2, Ch. 6, Pt. 2:

Public Records Management

Purpose: Create an effective records management program for executive branch agencies and political subdivisions

Preservation of essential records for the continuity of civil government in an emergency or its aftermath

Exec. branch agencies administer its records management per SOS and state records committee procedures

Title 2, Ch. 6, Pt. 3:

Records of Elected Executive Branch Officers

Montana Historical Society manages and safeguards official records; enforces restrictions on access to official records; removes duplicate records

Applies to the Governor, Lieutenant Governor, Attorney General, Secretary of State, Superintendent of Public Instruction, and Auditor

Preservation of outgoing officials' records

Title 2, Ch. 6, Pt. 4:

Local Government Records

LGRC and its subcommittee handle requests for destruction/disposal of records
LGRC establishes records retention and disposition schedules

Secretary of State is authorized to adopt rules regarding the LGRC and its duties

Records more than 10 years old must be offered to certain entities for archival before being destroyed

Secretary of State

Establish guidelines to inventory, catalog, retain, transfer all public records of state agencies

Establish and operate a state records center

Adopt rules for management of public records (as of 2011)

Essential records maintained for continuity of business

State Records Committee

Members: reps from DOA; Legislative Auditor; Attorney General; Secretary of State; Montana Historical Society
Approve, modify, or disapprove recommendations for retention schedules of all public records

Unanimous vote for disposal/destruction of public records

Department of Administration

Ensure compatibility with information technology systems

Develop standards for technological compatibility for records management equipment

Approve all executive agency acquisitions of records management equipment

Local Government Records Committee (LGRC)

Members: State Archivist; State Records Manager; 4 local records custodians; rep from DOA; volunteer from Montana Genealogical Society

Approve, modify or disapprove proposals for local government records retention and disposal

Montana Historical Society - State Archives

Established to preserve noncurrent records of historical permanent value to the state or to local governments and for records management; operate the state archives

Assist in establishing guidelines to inventory, catalog, retain, and transfer public records

Potential Federal Implications

Compliance with federal requirements, such as HIPAA; FERPA; agency-specific requirements – outlined in the Code of

Implication
NIST, DOD

Education & Local Gov't Committee
September 24, 2013

* Terms that are blue and under